HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT APPEAL No.872 OF 2006

Between:

M/s. Chetana Laminates Pvt. Ltd.,
Uppal, Hyderabad.

..... Appellant

AND

The State Financial Corporation,
Rep. by its General Manager,
Ranga Reddy (East) Branch & others **.....Respondents**

:: J U D G M E N T ::

Counsel for the appellant : Shri P. Thirumala Rao

Counsel for respondent Nos.2 and 3 : Shri P. Gangaiah Naidu,
Senior Advocate assisted by
Shri K. Rama Mohan

18th October, 2006

Per G.S.SINGHVI, C.J.

The ambit and reach of the Court's power to interfere with the action taken by the public financial corporations established under the State Financial Corporations Act, 1951 (for short, 'the Act') to recover their dues has become subject matter of several decisions by the Supreme Court, some of which are – **Mahesh Chandra v. Regional Manager, U.P.F.C.,**[1] **U.P. Financial Corpn. v. Gem Cap (India) Pvt. Ltd.**[2], **U.P. Financial Corporation v. Naini Oxygen and Acetylene Gas Ltd.**[3], **Karnataka State Financial Corporation v. Micro Cast Rubber and Allied Products Private Ltd.**[4], **Haryana Financial Corporation v. Jagdamba Oil Mills**[5], **Gajraj Jain v. State of Bihar**[6], **Karnataka State Industrial Investment and Development Corporation v. Cavalet India Ltd.**[7]. In **Mahesh Chandra**'s case, a Division Bench of the Supreme Court after noticing the object underlying the Act, namely, to promote industrialization in the States by encouraging small entrepreneurs to participate in economic growth of the country by giving them financial assistance for setting up medium and small scale industries and taking cognizance of the fact that the power conferred on the corporation under Section 29 is very wide, held that the sale of the assets of the borrower should be resorted to rarely and that the exercise undertaken for this purpose should be bona fide. Paragraph 21 of the judgment, which reflects this view of the Supreme Court, reads as under:

> "The sale by public auction or tender or private negotiation should be bona fide action. First is universally recognised to be the best and most fair method. It is expected to fetch best competitive price and is beyond reproach. Second should be

resorted to rarely only if first is an impossibility. Generally tenders would be calling quotations to execute public work or to award contracts etc. And third should always be avoided as it cannot withstand public gaze. It casts reflection on Corporation and its officials and is against social and public interest. In case transfer cannot be effected by public auction and it is necessary to resort to sale by tender it is both fair and necessary to inform the unit holder, if unit has been got valued for purposes of transfer of the estimated value for sale as he is as much interested as the Corporation. Sale of public property by calling tenders escape attention of many an intending participant. Every endeavour should, therefore, be made to give wide publicity and to get the maximum price. Bureaucracy feels that accountability is an impediment to efficient discharge of the duty. Accountability is no more and no less than, the concept of accountability of a private concern to their shareholders. There is a distinction between prying into details of day-to-day administration and of the legitimate actions or resultant consequences thereof. To enthuse efficiency into administration, a balance between accountability and autonomy of action of management in public enterprises should be carefully maintained. Over-emphasis on either would impinge upon public efficiency. But undermining the accountability would give immunity or carte blanche power to deal with the public property or of the debtor at whim or vagary. Whether the public authority acted bona fide and in the best interest as prudent owner in the given facts would do, be gauged from impugned action and attending circumstances. The authority should justify the action assailed on the touchstone of justness,

fairness, reasonableness and as a reasonable prudent owner."

The Division Bench of the Supreme Court then proceeded to give the following directions:

> "Every endeavour should be made, to make the unit viable and be put in working condition. If it becomes unworkable:
>
> (1) Sale of a unit should always be made by public auction.
>
> (2) Valuation of a unit for purposes of determining adequacy of offer or for determining if bid offered was adequate, should always be intimated to the unit holder to enable him to file objection if any as he is vitally interested in getting the maximum price.
>
> (3) If tenders are invited then the highest price on which tender is to be accepted must be intimated to the unit holder.
>
> (4)(*a*) If unit holder is willing to offer the sale price, as the tenderer, then he should be offered same facility and unit should be transferred to him. And the arrears remaining thereafter should be rescheduled to be recovered in instalments with interest after the payment of last installment fixed under the agreement entered into as a result of tendered amount.
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> (*b*) If he brings third parties with higher offer it would be tested and may be accepted.
>
> (5) Sale by private negotiation should be permitted only in very large concerns where investment runs in very huge amount for which ordinary buyer may not be available or the industry itself may be of such nature that by (*sic* many) normal buyers may not be available. But before taking such steps there should be advertisements not only in daily newspapers but business magazines and papers.
>
> (6) Request of the unit holder to release any part of the property on which the concern is not standing of which he is the owner should normally be granted on condition that sale proceeds shall be deposited in loan account."

The above noted judgment was distinguished in **U.P. Financial**

Corpn. v. Gem Cap (India) Pvt. Ltd. (supra) and it was held:

> "A Financial Corporation like the appellant is an instrumentality of the State created under the Act. It is not like an ordinary money-lender or a Bank which lends money. It is a lender with a purpose — the purpose being promoting the small and medium industries. At the same time, it is necessary to keep certain basic facts in view. The relationship between the corporation and the borrower is that of creditor and debtor. The corporation is not supposed to give loans once and go out of business. It has also to recover them so that it can give fresh loans to others. The corporation no doubt has to act within the four corners of the Act and in furtherance of the object underlying the Act. But this factor cannot be carried to the extent of obligating the corporation to revive and resurrect every sick industry irrespective of the cost involved. Promoting industrialisation at the cost of public funds does not serve the public interest; it merely amounts to transferring public money to private account. The fairness required of the corporation cannot be carried to the extent of disabling it from recovering what is due to it. While not insisting upon the borrower to honour the commitments undertaken by him, the corporation alone cannot be shackled hand and foot in the name of fairness. *Fairness is not a one way street, more particularly in matters like the present one*. The corporations too borrow monies from Government or other financial corporations. They too have to pay interest thereon. The fairness required of it must be tempered — nay, determined, in the light of all these circumstances."

The view expressed in the second judgment found its echo in **U.P. Financial Corpn. v. Naini Oxygen & Acetylene Gas Ltd.** (supra), **Karnataka State Financial Corporation v. Micro Cast Rubber & Allied Products (P) Ltd.** (supra) and **Haryana Financial Corpn. v. Jagadamba Oil Mills** (supra). In the last mentioned judgment, a three Judges Bench of the Supreme Court referred to

various judicial precedents including the judgments to which reference has been made hereinabove and held:

> "…….The Corporation is an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As such in the discharge of its functions, it is free to act according to its own light. The views it forms and decisions it takes are on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. Unless its action is mala fide, even a wrong decision by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however, more prudent, commercial or businesslike it may be, for the decision of the Corporation. As was observed by this Court in **U.P. Financial Corpn. v. Naini Oxygen & Acetylene Gas Ltd.** in commercial matters the courts should not risk their judgments for the judgments of the bodies to whom that task is assigned. As was rightly observed by this Court in **Karnataka State Financial Corpn. v. Micro Cast Rubber & Allied Products (P) Ltd.** in the matter of action by the Corporation in exercise of the powers conferred on it under Section 29 of the Act, the scope of judicial review is confined to two circumstances i.e. (*a*) where there is statutory violation on the part of State Financial Corporation, or (*b*) where State Financial Corporation acts unfairly i.e. unreasonably. While exercising its jurisdiction under Article 226 of the Constitution of India, 1950 (in short "the Constitution"), the High Court does not sit as an Appellate Authority over the acts and deeds of the Corporation. Similarly, the courts other than the High Courts are not to interfere with action under Section 29 of the Act unless the aforesaid two situations exist."

The three Judge Bench specifically referred to **Mahesh Chandra**'s case (supra) and virtually over-ruled the same by recording the following observations:

> "The view in **Mahesh Chandra** case appears to have been too widely expressed without taking note of the ground

realities and the intended objects of the statute. If the guidelines as indicated are to be strictly followed, it would be giving premium to a dishonest borrower. It would not further the interest of any Corporation and consequently of the industrial undertakings intending to avail financial assistance. It would only provide an unwarranted opportunity to the defaulter (in most cases chronic and deliberate) to stall recovery proceedings. It is not to be understood that in every case the Corporations shall take recourse to action under Section 29. Procedure to be followed, needless to say, has to be observed. If any reason is indicated or cause shown for the default, the same has to be considered in its proper perspective and a conscious decision has to be taken as to whether action under Section 29 of the Act is called for. Thereafter, the modalities for disposal of seized unit have to be worked out. The view expressed in **U.P. Financial Corpn. v. Gem Cap (India) (P) Ltd.** (1993) 2 SCC 299 appears to be more in line with the legislative intent. Indulgence shown to chronic defaulter would amount to flogging a dead horse without any conceivable result being expected. As the facts in the present case show, not even a minimal portion of the principal amount has been repaid. That is a factor which should not have been lost sight of by the courts below. It is one thing to assist the borrower who has intention to repay, but is prevented by insurmountable difficulties in meeting the commitments. That has to be established by adducing material. In the case at hand factual aspects have not even been dealt with, and solely relying on the decision in **Mahesh Chandra** case the matter has been decided."

In **Karnataka State Industrial Investment and Development Corporation v. Cavalet India Ltd.** (supra), the Supreme Court reiterated the law laid down in **Haryana Financial Corporation v. M/s.Jagadamba Oil Mills** and culled out the following principles:

" i) The High Court while exercising its jurisdiction under Article 226 of the Constitution does not sit as an appellate authority over the acts and deeds of the Financial Corporation

and seek to correct them. The doctrine of fairness does not convert the writ courts into appellate authorities over administrative authorities.

(ii) In a matter between the Corporation and its debtor, a writ court has no say except in two situations:

(a) there is a statutory violation on the part of the Corporation, or

(b) where the Corporation acts unfairly i.e. unreasonably.

(iii) In commercial matters, the courts should not risk their judgments for the judgments of the bodies to which that task is assigned.

(iv) Unless the action of the Financial Corporation is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however, more prudent, commercial or businesslike it may be, for the decision of the Financial Corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable.

(v) In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold and this could be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer.

(vi) Public auction is not the only mode to secure the best price by inviting maximum public participation, tender and negotiation could also be adopted.

(vii) The Financial Corporation is always expected to try and realise the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible and if any reason is indicated or cause shown for the default, the same has to be considered in its proper perspective and a conscious decision has to be taken as to whether action under Section 29 of the Act is called for. Thereafter, the modalities for disposal of the seized unit have to be worked out.

(viii) Fairness cannot be a one-way street. The fairness required of the Financial Corporations cannot be carried to the extent of disabling them from recovering what is due to them. While not insisting upon the borrower to honour the commitments undertaken by him, the Financial Corporation alone cannot be shackled hand and foot in the name of fairness.

(ix) Reasonableness is to be tested against the dominant consideration to secure the best price."

We have prefaced disposal of this appeal by noticing the relevant judicial precedents because the question which arises for determination in this appeal filed against order dated 4-7-2006 passed by the learned Single Judge in Writ Petition No.23102 of 2005 is whether the action of Andhra Pradesh State Financial Corporation (for short, 'the Corporation') to sell the industrial unit – M/s.Acro Industries, C-18/1, IDA, Uppal, Hyderabad for realization of its dues is arbitrary and vitiated due to violation of the rules of natural justice.

For deciding the aforementioned question, we have taken the facts from the pleadings of the writ petition and additional affidavits filed in this appeal. These are:

i) On an application made by the appellant, the Corporation, vide its letter dated 4th June, 1999, sanctioned loan of Rs.52.60 lakhs subject to the terms and conditions specified in the accompanying annexure.

ii) For securing repayment of the loan, Sri S.Gnaneshwara Rao, father of the Managing Director of the appellant company mortgaged his property situated at IDA, Uppal, Hyderabad.

iii) On 17-9-1999, the Corporation disbursed a sum of Rs.33.43 lakhs. Later on, additional amount was

disbursed making a total of Rs.49.14 lakhs.

iv) In terms of the agreement executed between the parties, the appellant was required to commence repayment of loan with effect from 1-9-2000.

v) On account of the appellant's failure to repay the instalments of loan together with interest, the Corporation sent notices dated 17-2-2001, 8-6-2001 and 17-8-2001 requiring the appellant to clear the outstanding dues with an indication that failure to repay the amount on or before the specified date may result in initiation of action under Section 29 of the State Financial Corporations Act, 1951 (for short, 'the Act').

vi) In the meanwhile, vide letter dated 31-3-2001, the Corporation cancelled the un-availed term loan of Rs.3,45,840/- and re-fixed the loan instalments. In terms of that letter, the appellant was to repay the entire loan in 29 quarterly instalments (first 28 instalments of Rs.1,69,500/- and the last instalment of Rs.1,68,160/-).

vii) The representative of the appellant gave cheque dated 27-9-2001 drawn on Andhra Bank, SBI, Uppal for a sum of Rs.2,00,000/-, but the same was dishonoured. Consequently, the Corporation issued notice dated 12-10-2001, whereby the appellant was informed that its action amounted to an offence under the Negotiable Instruments Act, 1881 (for short, 'the N.I.Act').

viii) After about six months, the appellant sent letter dated 16-5-2002 to the Corporation conveying that due to lack of working capital, the unit set up by it had not been working well and, on that account, the dues of the

Corporation could not be paid. The appellant requested the Corporation to sanction working capital term loan and simultaneously promised to clear the dues of interest amounting to Rs.9.94 lakhs by the end of December, 2002 in monthly instalments.

ix) The Corporation, vide its letter dated July 1, 2002, informed the appellant that it had no objection to sanction the working capital term loan, provided the conduct of affairs by the promoters is satisfactory.

x) Vide letter dated 11-7-2002, the Corporation informed the appellant that it should adhere to the schedule of payment of interest. O n 28-8-2002, the Corporation advised the appellant to clear the arrears of Rs.12,36,018/- towards interest. Similar communication was sent to the appellant on 8-9-2002.

xi) Vide letter dated 26-12-2002, the Corporation informed Sri S.Gnaneshwara Rao of M/s.Acro Industries, Plot No.C-11, IDA, Uppal, who, as mentioned above, mortgaged his property as collateral security for repayment of loan advanced to the appellant that the latter has failed to repay the instalments of principal amount and interest. Sri S.Gnaneshwara Rao was advised to impress upon the borrower to clear the arrears of Rs.14,56,939/- with an indication that non-payment of the dues may result in taking of action for sale of security under Section 29 of the Act.

xii) The Corporation sent further communications d a t e d 13-6-2003,30-6-2003 and 7-8-2003 to the appellant for repayment of the loan.

xiii) In the meanwhile, the unit of the appellant was seized on 7-3-2003. However, on a promise made by the Managing Director of the appellant to pay the dues, the seizure was lifted on 27-3-2003. Notwithstanding this, the appellant did not clear the outstanding dues forcing the Corporation to recall the entire loan.

xiv) On 27-8-2003, the Managing Director of the Company, Sri S.G. Prashanth Kumar submitted one Demand Draft for Rs.2,00,000/- and eight post-dated cheques of Rs.1,00,000/- each with an undertaking that if any cheque is dishonoured, then the unit may be seized without further notice. This is evinced from the following extract of letter dated 27-8-2003:

> "Further, we would like to inform to you that we have entered into job work agreement for converting 14 lakhs meters @ 0.22 ps/mtr, which will enable us to generate nearly Rs.3.20 lakhs. Any of the cheque is dishonoured, you may seize the unit without any further notice."

xv) However, cheque dated 10-9-2003 of Rs.1,00,000/- given by the Managing Director of the appellant was dishonoured by the State Bank of India. This compelled the Corporation to again warn the appellant not to issue such cheques, else action will be initiated under the N.I. Act.

xvi) The Corporation sent further communications dated 2-6-2004 and 4-8-2004 to the appellant for repayment of loan, but the latter failed to clear the dues.

xvii) The representative of the appellant attended the recovery review meeting held on 30-10-2003 and

promised to pay Rs.4,00,000/- in two instalments of Rs.2,00,000/- each by 7-11-2003 and 15-11-2003 and clear the balance by November, 2003, but no tangible effort was made for payment of the dues. A similar promise made by the appellant's representative on 14-6-2004 also proved abortive.

xviii) In August, 2004, the Corporation advertised the collateral security offered by Sri S.Gnaneshwara Rao for sale. Simultaneously, letter dated 5-8-2004 was addressed to the appellant and Sri S.Gnaneshwara Rao to bring bidders who could offer to purchase the property. It, however, appears that the sale of the collateral security did not materialize because of the representations dated Nil (received on 9-8-2004 by the Corporation) and 17-8-2004 made by the Managing Director of the appellant for One Time Settlement.

xix) In response to the aforementioned representations, the Corporation advised the representative of the appellant to attend the meeting organised for One Time Settlement, but he did not avail the opportunity. Therefore, the Corporation again advertised the collateral security for sale.

xx) With a view to frustrate the action initiated by the Corporation, the appellant's representative again sent letter dated 14-10-2005 to the Managing Director of the Corporation for One Time Settlement. The same was rejected by the Corporation and vide letter dated 20-10-2005, the appellant was informed

that the collateral security had been sold for a sum of Rs.91 lakhs and the sale has been confirmed.

xxi) The appellant challenged the sale of the collateral security by filing writ petition under Article 226 of the Constitution, which was registered as Writ Petition No.23102 of 2005. In the writ petition, the appellant did not implead the highest bidders i.e., respondent Nos.2 and 3 as party respondents.

xxii) By an order dated 7-11-2005, the learned Single Judge allowed the writ petition and quashed the sale of the collateral security on the ground of violation of the rules of natural justice.

xxiii) Respondent Nos.2 and 3 challenged the order of the learned Single Judge in Writ Appeal No.2299 of 2005, which was allowed by the Division Bench on 22-2-2006 with an observation that the order under challenge is vitiated due to violation of the rules of natural justice inasmuch as respondent No.1 (appellant herein) had deliberately omitted to implead the purchasers as party respondents. The Division Bench remanded the case to the Single Bench for fresh adjudication with liberty to the writ petitioner (appellant herein) to implead the purchasers as party respondents."

In the affidavit filed in support of the writ petition, Sri S.G. Prashanth Kumar, Managing Director of the appellant did not dispute the facts relating to sanction and disbursement of the loan by the Corporation and his failure to repay the instalments (principal as well as interest). He also did not deny the receipt of various notices issued

by the Corporation and the fact that two of the cheques issued by him were dishonoured by the concerned banks. He, however, questioned the sale of the collateral security by asserting that the action of the Corporation is vitiated due to violation of the rules of natural justice and arbitrary exercise of power. He pleaded that the Corporation had not given sufficient notice regarding the proposed sale and, on that account, he could neither make effort for repayment of the outstanding dues nor bring a buyer who could give a better offer. Another plea taken by him was that during the pendency of his request for One Time Settlement, the Corporation was not at all justified in putting the collateral security to sale.

In the counter filed on behalf of the Corporation in the form of affidavit of Sri E.Chengalrayulu, Assistant General Manager, it was averred that despite repeated opportunities, the petitioner (appellant herein) failed to repay the instalments of loan with interest necessitating initiation of action under Section 29 of the Act. It was further averred that notices were given from time to time to the petitioner to clear the dues and participate in the sale proceedings, but no effort was made by the latter to repay the instalments of loan or bring a buyer who could give a better offer. According to Sri E.Chengalrayulu, the sale was confirmed by the competent authority. On the issue of the petitioner's prayer for One Time Settlement, the deponent averred that its representative failed to avail the opportunity provided by the Corporation vide letter dated 31-8-2004.

On a consideration of the pleadings of the parties and material placed before him, the learned Single Judge dismissed the writ petition. He noted that despite several notices, the petitioner failed to repay the instalments of loan; that the petitioner had tendered cheque dated 27-9-2001 for Rs.2,00,000/-, which was

dishonoured; that the representative of the petitioner repeatedly assured the Corporation to clear the outstanding dues, but no substantive effort was made in that direction; that even after the seizure of the unit was recalled on 27-3-2003, the due amount was not paid; that cheque dated 10-9-2003 issued by the petitioner was dishonoured; that in response to the petitioner's request for One Time Settlement, the Corporation invited its representative to attend the meeting, but he failed to do so; that in January, 2005, the representative of the petitioner promised to pay Rs.5 to 6 lakhs, but did not pay the dues; that in July, 2005, the petitioner sought postponement of the auction by promising to pay Rs.4,00,000/- in 3-4 days, but paid only Rs.2,00,000/-; that pursuant to paper notification dated 30-6-2005 and 5-7-2005, the Corporation received sealed tenders from the bidders; that in the auction held on 5-10-2005, eight bidders participated and the highest bid of Rs.91 lakhs given by respondent Nos.2 and 3 was accepted, and that the sale was confirmed by the competent authority on 13-10-2005 and concluded that the action initiated by the Corporation cannot be termed as arbitrary. The learned Single Judge rejected the plea of violation of the rules of natural justice by recording the following reasons:

> "……Firstly the petitioner had abundant notice. The number of letters exchanged between the first respondent and the petitioner on the outstanding liability of the petitioner have already been chronicled hereinabove and mark testimony to the generous opportunity offered to the petitioner, to clear the dues. The petitioner was also aware of the consequences of a persistent conduct of default in the repayment of its loan obligations. The chronic nature of the default is overwhelmingly established from the facts chronicled above. The petitioner cannot expect nor claim an OTS as of right. The loan installments were re-scheduled

more than once and that is what the 1st respondent-Corporation thought, in the spectrum of its available discretion, to be the appropriate measure of accommodation of the petitioner's financial stringency."

The learned Single Judge also rejected the appellant's plea that the action of the Corporation was unreasonable and observed:

"The market place is a harsh and adult world and only the fittest survive. There is no law, which confers a jurisdiction on this Court under Article.226 to issue directives to the 1st respondent-Corporation to accommodate further, a class of industrialists such as a petitioner. No such law, legal instrument or principle of law, is shown to this Court which warrants a departure from the established norms and principles structuring the contours of judicial scrutiny. Judicial interdiction is justified only against perverse exercise of discretion by an executive agency. On an analysis of the facts in this case, no perversity is discernible.

The other contention urged on behalf of the petitioner is that the industrial unit was sold for a value much less than the estimated value. This is not established. The unit was estimated (land and machinery) at around Rs.95 lakhs. The unit was in fact sold for Rs.91 lakhs, a marginal difference and at any rate for a competing value fetched by a public and transparent process of sale. The margin is not so gross as to deserve the appellation of arbitrary and gross under-valuation, within the spectrum of a review under Article 226 of the Constitution."

Sri P.Thirumala Rao, learned counsel for the appellant put-forward the following contentions:

i) The Corporation did not comply with the principles embodied in Order XXI, Rule 6 of the Code of Civil Procedure before resorting to the sale.

ii) The sale proceedings are liable to be invalidated on the ground of violation of the rules of natural justice and arbitrary exercise of power.

iii) The action of the Corporation is vitiated due to lack of bona fides inasmuch as the appellant was not given reasonable opportunity to repay the loan.

In support of his arguments, learned counsel relied on the judgments of the Supreme Court in **M/s. I.T.I. Ltd. v. M/s.Siemens Public Communications Networks Ltd.**[8], **Mahesh Chandra v. Regional Manager, U.P. Financial Corporation** (supra), and **Gajraj Jain v. State of Bihar** (supra)**.**

Sri P.Gangaiah Naidu, Senior Advocate appearing for respondent Nos.2 and 3 argued that the action taken by the Corporation for realization of its dues does not suffer from any legal infirmity and the learned Single Judge did not commit any error by refusing to entertain the appellant's prayer for setting aside the sale. Sri Naidu emphasized that the appellant had not only failed to repay the instalments of loan with interest, but also gave cheques, which were dishonoured by the bank, and this was clearly demonstrative of its intention not to repay the loan. Learned counsel then submitted that his clients had sold their property for the purpose of paying the instalments of price and it will be wholly inequitable if the Court accepts the deposit made by the appellant at this belated stage. In support of his argument that the Court should not interfere with the exercise of power by the Corporation under Section 29 of the Act, Sri Naidu relied on the judgments of the Supreme Court in **Haryana Financial Corpn. v. Jagadamba Oil Mills** (supra) and **Karnataka State Industrial Investment and Development Corporation v.**

Cavalet India Ltd. (supra). Sri Naidu objected to the consideration of the argument of Sri Thirumala Rao regarding non-compliance of the principles embodied in Order XXI, Rule 6 CPC by arguing that the same is neither borne out from the pleadings of the writ petition nor any such argument was advanced before the learned Single Judge.

Before dealing with the respective contentions, we consider it proper to take notice of some post-appeal events. The same are detailed below:

i) After arguing the case on 25-8-2006, learned counsel for the appellant made a statement that his client is ready and willing to deposit a sum of Rs.91 lakhs, which is equivalent to the highest bid given by respondent Nos.2 and 3. His request was accepted and the case was adjourned to 1-9-2006. Thereafter, the appellant deposited Rs.91 lakhs with the Corporation.

ii) During the course of hearing on 1-9-2006, learned counsel for the appellant submitted that the learned Single Judge disposed of the writ petition without giving him an opportunity to file rejoinder. His grievance was rejected by the Division Bench with an observation that no such request appears to have been made before the learned Single Judge. However, with a view to give full opportunity to produce all the documents, liberty was given to the appellant to file application under Order XLI, Rule 27 CPC.

iii) Thereafter, the Managing Director of the appellant filed affidavit purporting to be one under Order XLI, Rule 27 CPC. In paragraphs 7 and 8 of that affidavit, the

deponent averred as under:

"7. It is submitted that the fact that the respondent Corporation had deliberately undervalued the property is discernible from the offers received by the bidders. The respondent Corporation valued the property at Rs.61.35 lakhs against which the bidders i.e., M/s.Sai Steel Traders quoted Rs.76 lakhs, M/s.Srinivasa Granites quoted a price of Rs.79 lakhs, M/s.Anil Traders quoted Rs.82 lakhs, M/s.Deepika Steels quoted Rs.90 lakhs and Sri P.V.Ramana quoted Rs.91 lakhs. It is evident from the offers made by the bidders that the value of the property was much higher than what was valued by the respondent Corporation. It is pertinent to mention here that the bidder shown at Sl.No.1, M/s.Srinivasa Granites is owned and managed by respondents 2 and 3. This fact evidently indicates that the entire bidding process was engineered by forming a cartel to prevent genuine buyers.

8. In support of this fact, the petitioner seeks leave of the Hon'ble Court to place facts evidencing the true value of the property. The petitioner has obtained the certified copy of the sale deed bearing document No.9648/2006, dt.30-6-2006 executed between M/s.Indiana Dairy Specialities Ltd. (In Liqd.) and M/s.Heritage Foods (India) Ltd. wherein an extent of 13,000 Sq.yds. (2.69 acres) in Plot No.C-10, Road No.7, IDA, Uppal, Hyderabad was sold for an amount of Rs.6,05,00,000/-. The petitioner also seeks permission of the Hon'ble Court to place a news item published in Deccan Chronicle, Hyderabad edition dt.13-9-2006 to substantiate the true value of the properties situated in the vicinity."

iv) Respondent No.2, Pilli Venkata Ramana filed counter affidavit dated 8-10-2006. Paragraphs 6, 7, 8 and 9 of that affidavit read as under:

"6. I submit that the market valuation certificate issued

on 1-10-2005 by the Sub-Registrar, Uppal is at Rs.1500/- per square yard which comes to Rs.61.30 lakhs. Even the latest valuation certificate issued by the Sub-Registrar, Uppal is not more than the offer quoted by him and accepted by the Corporation. I submit with respect that the sale deed referred in para 8 has nothing to do with the property in question as the Indian Dairy Specialties Limited (in liquidation) and Heritage Foods (India) Limited is a large scale industry and having running unit with existing structures namely plant and machinery for manufacture of dairy products and the same cannot be compared with a vacant land of the appellant herein. The other allegations are hereby denied.

7. In reply to para 9 and 10, I submit that the first respondent Corporation followed the entire procedure contemplated under Section 29 of SFC Act and there is no defect in the procedure followed by the Corporation. On the contrary, the appellant is a chronic defaulter, he cannot claim any equity nor can he claim that he is entitled to retain the property at his will and pleasure. The loan taken by him is public money and the Corporation is having all the powers under Section 29 of the SFC Act to proceed with the collateral security property for sale. The repeated opportunities provided by the Corporation have not been utilized by the appellant herein as seen from the record filed by the Corporation herein. The allegation that the Corporation was under the obligation to call for offers from the Directors, promoters and guarantors is also incorrect. When a notice is issued and served on the appellant, the appellant could not utilize the opportunity and he cannot blame the Corporation in a later date that too after confirmation of the sale.

8. In reply to para 11, 12 and 13 of the additional affidavit, it is a fact that the writ petition was initially allowed on 7-11-2005 with a direction to the appellant company to deposit certain amounts on or before 12-12-

2005, but he could not deposit the same though he had 18 days time from 7-11-2005 to 25-11-2005. This itself clearly shows that he has not evinced any interest earlier. Now, for obvious reasons, he filed the writ appeal. It is relevant to submit that pursuant to the directions issued by this Hon'ble Court he has deposited the amount by way of 31 D.Ds. This itself clearly shows that there is somebody behind him. The allegation that by virtue of the stay granted by this Hon'ble Court in W.A.No.2299 of 2005, he has been precluded from depositing the amount is totally incorrect.

9. In reply to para 12 of the additional affidavit filed by the appellant, I submit that we have deposited the amounts as required by the Corporation in the sale confirmation letter dated 15-10-2005. I submit that I requested the Corporation vide letter dated 26-12-2005 that I am prepared to deposit the amount as required in the 2nd terms provided if the sale deed is executed in our favour. But the Corporation expressed its inability to register the property since the matter is sub judice before this Hon'ble Court. In fact, I have already sold my property to the third party for a lower value to comply with the directions issued by the Corporation. The allegation that I did not comply with the terms of sale confirmation letter dated 15-10-2005 is false."

The affidavits and documents filed by the parties have been taken on record and their Advocates were allowed to make submissions with reference to the additional pleadings and documents.

Adverting to the first contention of the learned counsel for the appellant, we find that the affidavit filed in support of the writ petition is totally silent on the issue of alleged non-compliance of the provisions contained in Order XXI, Rule 6 CPC by the Corporation. Not only this, counsel appearing for the appellant did not argue before the learned

Single Judge that the sale of the collateral security is contrary to Order XXI, Rule 6 CPC and, therefore, he did not have the occasion to consider the same. Indeed, it is not even the appellant's case, as set out in the memorandum of appeal, that such an argument was raised before the learned Single Judge and the same has not been considered. Therefore, at this belated stage, we are not inclined to entertain the new plea sought to be raised for the first time during the course of arguments and that too when no factual foundation has been laid for raising such plea and the other side did not get opportunity to controvert the same.

The argument of Sri Thirumala Rao that the sale proceedings are vitiated due to violation of the rule of audi alteram partem is without substance and is liable to be rejected because it is not supported by the factual matrix of the case. A recapitulation of the pleadings shows that from February, 2001 to August, 2004, the Corporation issued more than one dozen notices to the appellant requiring it to repay the instalments of loan (principal as well as interest) with a clear indication that its failure to do so may lead to initiation of action under Section 29 of the Act. In his affidavit, Sri S.G. Prashanth Kumar, Managing Director of the appellant did not deny the fact that he had received the notices issued by the Corporation. It is also borne out from the fact that in March, 2003, the Corporation seized the unit of the appellant, but released the same on a promise made by Sri S.G. Prashanth Kumar that he would repay the outstanding dues. However, as happened on earlier occasions, he did not keep his promise. The corporation also issued notices to Sri S. Gnaneshwara Rao (father of the Managing Director of the appellant), who had furnished collateral security of his property, and informed him that the appellant has failed to repay the dues and, therefore, it has become necessary to take action under

Section 29 of the Act. It is also not in dispute that two of the cheques issued by the appellant were dishonoured by the concerned banks. Therefore, it is not open to the appellant to contend that the Corporation had not given him reasonable opportunity to repay the outstanding dues. The recalcitrant attitude exhibited by the appellant is evinced from the fact that repeated promises made by its Managing Director to repay the dues of the Corporation proved illusory and at least on two occasions he had committed offence by tendering cheques, which were not honoured by the banks. The sale notices issued by the Corporation contained full particulars of the collateral security proposed to be auctioned. The Managing Director of the appellant as well as his father were made aware of the dates of auction, but neither of them came forward to clear the dues of the Corporation or bring a buyer who could purchase the unit. In view of this, the conclusion drawn by the learned Single Judge that the appellant was a chronic defaulter and that it had been given reasonable opportunity to clear the dues cannot be faulted. Likewise, the observations made by the learned Single Judge that having regard to the financial stringency faced by the appellant, the Corporation had given it maximum latitude in the matter of repayment of loan are perfectly justified and we do not see any valid reason to take a different view.

The submission of the learned counsel for the appellant that his client did not get reasonable opportunity to repay the loan and bring a better offer sans credibility and deserves to be rejected. The Managing Director of the appellant and Sri S. Gnaneshwara Rao, who had furnished collateral security, were fully cognizant of the action initiated by the Corporation under Section 29 of the Act and the sale advertisements issued by it. They knew about the date of auction, but

neither of them came forward to make a substantive bona fide offer to repay the outstanding dues or to bring a buyer who could give a better offer. Therefore, in the post-sale scenario, the grievance made by the appellant cannot be entertained and respondent Nos.2 and 3 cannot be deprived of the fruits of the highest bid given by them and that too by ignoring the fact that they sold their property for the purpose of meeting their obligation to pay the purchase price to the corporation.

If the ratio of the Supreme Court judgments in **Haryana Financial Corpn. v. Jagdamba Oil Mills** (supra) and **Karnataka State Industrial Investment Development Corporation v. Cavalet India Ltd.** (supra) is applied to the facts of this case, there is no escape from the conclusion that the learned Single Judge rightly declined to nullify the action of the Corporation to sell the collateral security furnished by the appellant.

The judgment of the Supreme Court in **Gajraj Jain v. State of Bihar** (supra), on which reliance has been placed by the learned counsel for the appellant, is clearly distinguishable. The facts of that case show that in 1982, a company was incorporated in the name of M/s.Katihar Flour Mills (P) Ltd. to take over the assets and business of a partnership firm with the same name. On 16-5-1988, the company took a term loan of Rs.90 lakhs from Bihar State Industrial Credit and Investment Corporation Ltd. (BICICO), which falls within the ambit of the Act. The Central Bank of India also advanced a working capital of Rs.1.40 crores to the company. On 20-10-1993, an agreement was approved by the shareholders of the company, in terms of which, three Directors of Jeloka Group, which had floated the company, resigned and three names of Jain Group were inducted. In January, 2001, Central Bank of India filed Case No.2 of 2001 against the company and its Directors for recovery of Rs.1.47 crores and for enforcement of

security. In February, 2002, BICICO initiated action under Sections 29 and 30 of the Act for recovery of its dues amounting to Rs.28.85 lakhs. In that very month, BICICO issued sale notice dated 22-2-2002. At that stage, Jeloka Group wrote to BICICO that the company has approached M/s.Stichworth Exports Pvt. Ltd., which was willing to pay the dues. However, BICICO took over possession of the assets of the company on 18-3-2002 and entered into an agreement of sale with respondent No.4 despite the fact that in the meanwhile M/s.Stichworth Exports Pvt. Ltd. offered to acquire the assets of the company for Rs.28.85 lakhs plus dues of Central Bank of India amounting to Rs.1.70 crores. The High Court dismissed the writ petition. The appeal preferred against the order of the High Court was also dismissed. The Supreme Court referred to an earlier judgment in **S.J.S. Business Enterprises (P) Ltd. v. State of Bihar**[9], wherein it was held that adequate publicity must be given to ensure maximum participation of bidders and held that BICICO had acted arbitrarily in entering into agreement of sale of assets in favour of respondent No.4 despite the fact that the appellant had not only deposited Rs.1 lakh for participation in the sale proceedings, but also deposited Rs.28.85 lakhs representing the entire dues, a day before the actual auction. In the present case, the appellant never exhibited its sincere willingness to repay the dues of the Corporation. Therefore, the ratio of the last mentioned judgment cannot be invoked for setting aside the order under challenge.

No other point has been argued.

In the result, the appeal is dismissed.

G.S.SINGHVI, C.J.

18th October, 2006

C.V. NAGARJUNA REDDY, J.

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[1] (1993) 2 SCC 279
[2] (1993) 2 SCC 299
[3] (1995) 2 SCC 754
[4] (1996) 5 SCC 65
[5] (2002) 3 SCC 496
[6] AIR 2004 SC 3392
[7] (2005) 4 SCC 456
[8] AIR 2002 SC 2308
[9] (2004) 7 SCC 166